

TORTS — NEGLIGENCE — TRAFFIC LIGHT, MOTORIST —
PEDESTRIAN — RELATIVE RIGHTS

The plaintiff, a pedestrian, entered an intersection upon the crosswalk with the green light in her favor. When she was half way across the light changed and the defendant motorist approaching from her right, with the light now indicating green in his favor, ran over the plaintiff's foot. The trial court charged that neither was wrongfully in the intersection and that their rights were equal. The jury found for the defendant. The Court of Appeals for the Ninth District, in reversing the judgment, imposed upon the driver an absolute duty to wait until the pedestrian had completed the crossing. The Supreme Court upheld the trial court, saying that the motorist was under no absolute duty to wait until the pedestrian had crossed; that neither had an absolute right but only a qualified right; that each had the right to proceed, exercising ordinary care with respect to the other.¹

The problem of right of way at intersections arises in various situations. As between two automobiles, the one having the right of way by statute in Ohio has been held to have an "absolute" right to cross but the court at once added that it is qualified by the requirement that it proceed in a "lawful manner."² No less protection would be afforded to the pedestrian who will suffer most in any collision. At common law, pedestrian and motorist have equal rights but each must exercise his right with due regard for the safety of the other.³ In the principal case the court had before it the two alternative rules for the protection of the pedestrian when caught in the intersection cross walk by a change of light. The view it adopted is one of relative rights; the motorist, equally with the pedestrian, has a right to proceed. To recover, the pedestrian must prove that the motorist advanced negligently, for negligence will not be implied from the fact of the accident.⁴

This rule of relative rights and duties finds support in other jurisdictions,⁵ and in earlier Ohio cases.⁶ The Supreme Court rejected the view adopted by the Court of Appeals that the pedestrian had an absolute right to complete his crossing. Such a rule would establish the negligence of the driver as a matter of law from the fact of his proceeding while a pedestrian was in the crosswalk. The duties of the motorist are the same under either rule: to look out for and to use reasonable

¹ *Martinovich v. E. R. Jones Co.*, 135 Ohio St. 137, 19 N.E. (2d) 452 (1939).

² *Morris v. Bloomgren*, 127 Ohio St. 147, 187 N.E. 2, 89 A.L.R. 831 (1933).

³ *Switzer v. Baker*, 178 Iowa 1063, 160 N.W. 372 (1916).

⁴ *Havermale v. Houch*, 122 Md. 82, 89 Atl. 319 (1913).

⁵ *Giles v. Leas*, 282 Pa. 318, 127 Atl. 774 (1925); *Lieberman v. McLaughlin*, 233 Ky. 763, 26 S.W. (2d) 753 (1930).

⁶ *Cleveland Ry. v. Goldman*, 122 Ohio St. 73, 170 N.E. 641 (1930).

care to avoid the pedestrian. The difference lies in the proof of negligence. A different situation is presented when a right-of-way ordinance is involved. Violation of such an ordinance by the motorist may constitute negligence *per se*.⁷ But such an ordinance must be unequivocal in its terms in order to confer an absolute right on the pedestrian. In *Horwitz v. Eurove*⁸ the Ohio Supreme Court held that an ordinance which provided: "The right of way upon street crossings . . . shall, in all cases, be given to pedestrians by all vehicles of every kind," created only a preferential, not an absolute, right. In this it was consistent with decisions in other jurisdictions.⁹

The question in these cases usually involves, not the defendant's negligence, but the contributory negligence of the plaintiff. Under either view, the pedestrian must use due care to avoid injury in crossing. If his right is only relative he must keep a lookout for automobiles, but he has a right to assume that motorists will obey the light signals.¹⁰ If his right to cross is absolute his duty to look out may be lessened. Some cases dealing with a pedestrian's right of way have said that he need not keep a continuous lookout.¹¹ Where a statute exists, the pedestrian has a right to assume that the motorist will obey it.¹²

While a doctrine giving the pedestrian an absolute right would have the merit of certainty and be more easily applied, it would seem that the rule of the principal case is more nearly in accord with the usual practice at street crossings and gives to the plaintiff all that he should reasonably expect.

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TORTS — PROXIMATE CAUSE AND PER SE NEGLIGENCE

A city ordinance of Warren, Ohio, provided that vehicular traffic was entitled to the right of way between intersections, but that such provision should not operate to relieve drivers of due care for the safety of pedestrians.¹ The plaintiff was struck and injured by the defendant's automobile, as he attempted to make a crossing between intersections. Testimony indicated that the automobile was moving at an excessive

⁷ *Schell v. DuBoise, adm'r*, 94 Ohio St. 93, 113 N.E. 664, 1917A A.L.R. 710 (1916).

⁸ *Horwitz v. Eurove*, 129 Ohio St. 8, 193 N.E. 644, 96 A.L.R. 782 (1934).

⁹ *Rolfs v. Mullins*, 179 Iowa 1223, 162 N.W. 783 (1917); *Bora v. Yellow Cab Co.*, 103 N. J. Law 377, 135 Atl. 889 (1927).

¹⁰ *Cleveland Ry. v. Goldman*, *supra*, note 6.

¹¹ *Newman v. Protective Motor Service*, 298 Pa. 509, 148 Atl. 711 (1930); *Griffith v. Slaybaugh*, 29 F. (2d) 437 (1928).

¹² *Hart v. Devereux*, 41 Ohio St. (1885); *Norris v. Jones*, 110 Ohio St. 598, 144 N.E. 274 (1924).

¹ The Warren ordinance, enacted in 1929: "Every pedestrian crossing a roadway at any point other than within a marked or unmarked crosswalk shall yield the right of way to vehicles on the roadway, provided that *this provision shall not relieve the driver of a vehicle from the duty to exercise due care for the safety of pedestrians.*" (Italics added)